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10/003,900	10/25/2001	Peter Worthington Hamilton	8762	7654

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EXAMINER

SIMONE, CATHERINE A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/003,900  
Filing Date: October 25, 2001  
Appellant(s): HAMILTON ET AL.

Peter D. Meyer  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
OCT 29 2004  
**GROUP 1700**

This is in response to the appeal brief filed August 16, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

5,965,235	McGuire et al.	10-1999
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**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire et al. (5,965,235).

McGuire et al. discloses a storage wrap material comprising a sheet material having a thickness ranging from about 0.0001 inches (0.0025 mm) to 0.001 inches (0.025 mm) (see col. 21, line 55 and col. 23, line 25), the sheet material having a first active side and a second side (see col. 2, line 66 to col. 3, line 10), the first active side comprising a plurality of three-dimensional non-adherent protrusions (Fig. 9, #12) extending outwardly from surrounding depressions (Fig. 9, #14) and an adhesive composition coating (Fig. 9, #16) on at least a portion of the depressions (Fig. 9, #14), wherein the adhesive composition coating (Fig. 9, #16) has a thickness less than the height of the non-adherent protrusions (Fig. 9, #12). However, McGuire et al. fails to disclose the adhesive coating having the specific range of about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in thickness. McGuire et al. does, however, teach the thickness of the adhesive coating to preferably range from *may be about* 0.0005 inch (0.013 mm) to about 0.002 inch (0.051 mm) thick (see col. 17, lines 40-45). Therefore, the thickness of the adhesive coating would be readily determined through routine experimentation by one having

ordinary skill in the art depending on the desired end results as shown by McGuire et al. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the thickness of the adhesive coating in McGuire et al. to range from about 0.00001 inches (0.00025 mm) to about 0.0002 inches (0.0051 mm), since it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Furthermore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the thickness of the adhesive coating in McGuire et al. to range from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in order to provide a thin adhesive coating for the purpose of having less costs and expenses when making the product.

McGuire et al. also fails to disclose the adhesive composition coating having a weight per unit area of about 0.1 g/m<sup>2</sup> to about 2 g/m<sup>2</sup> and of about 0.3 g/m<sup>2</sup> to about 1.5 g/m<sup>2</sup>. McGuire et al. does, however, teach the adhesive coating to consist of a latex pressure sensitive adhesive coating which is similar to that of the present invention (see col. 17, lines 40-45). Therefore, the weight per unit area of the adhesive coating composition would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results as shown by McGuire et al. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the adhesive coating in McGuire et al. with a weight per unit area of about 0.1 g/m<sup>2</sup> to about 2 g/m<sup>2</sup> and of about 0.3 g/m<sup>2</sup> to about 1.5 g/m<sup>2</sup>), since it has been held that where the general conditions of a claim are

disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

McGuire et al. teaches the adhesive coating covering less than 75% and less than 55% of the first active side of the sheet material (see col. 20, lines 1-5) and further teaches the first active side is activatable by an externally applied force exerted upon the sheet material (see col. 16, lines 63-67 and col. 17, lines 1-4). Also note in McGuire et al. the second side comprises an active side (see col. 3, lines 7-10) and the sheet material comprises a polymeric film material (see col. 17, lines 56-60). McGuire et al. also teaches the first active side comprising an adhesion peel force after activation by a user which is greater than an adhesion peel force exhibited prior to activation by a user and which is sufficient to adhere to and from a barrier seal against a target surface, the seal exhibiting barrier properties at least as great as those of the storage wrap material and the target surface (see col. 19, lines 1-29).

Regarding **claims 16-20**, the limitations recited in each of claims 16-20 are methods of production and therefore does not determine the patentability of the product itself. Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. MPEP 2113.

**(11) Response to Argument**

Rejection under 35 U.S.C. 103

Appellants argue that “the lowest value disclosed in the ‘235 reference is 2-1/2 times greater than the upper value of Appellants claimed range. The midpoint of the range disclosed in the 235’ reference is approximately twenty times the value of the midpoint of Appellants claimed

range. Thus, it is hard to understand how Appellants claim range can even be considered a “discovery [of] the optimum or workable ranges.”

McGuire et al. teaches a storage wrap material comprising a sheet material having a thickness ranging from about 0.0001 inches (0.0025 mm) to 0.001 inches (0.025 mm) (see col. 21, line 55 and col. 23, line 25), the sheet material having a first active side and a second side (see col. 2, line 66 to col. 3, line 10), the first active side comprising a plurality of three-dimensional non-adherent protrusions (Fig. 9, #12) extending outwardly from surrounding depressions (Fig. 9, #14) and an adhesive composition coating (Fig. 9, #16) on at least a portion of the depressions (Fig. 9, #14), wherein the adhesive composition coating (Fig. 9, #16) has a thickness less than the height of the non-adherent protrusions (Fig. 9, #12). However, McGuire et al. fails to teach the adhesive coating having the specific range of about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in thickness. McGuire et al. does, however, teach the thickness of the adhesive coating to preferably range from *may be about* 0.0005 inch (0.013 mm) to about 0.002 inch (0.051 mm) thick (see col. 17, lines 40-45). Therefore, the thickness of the adhesive coating would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results as shown by McGuire et al. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the thickness of the adhesive coating in McGuire et al. to range from about 0.00001 inches (0.00025 mm) to about 0.0002 inches (0.0051 mm), since it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Furthermore, it would have been obvious to one of

ordinary skill in the art at the time the applicant's invention was made to have modified the thickness of the adhesive coating in McGuire et al. to range from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in order to provide a thin adhesive coating for the purpose of having less costs and expenses when making the product.

Appellants further state that "the Appellants declarant stated that, "The instant Application is distinguishable from McGuire because the bending resistance of the substrate becomes the limiting factor in the adherence of a food storage wrap to rough or irregular surfaces when thin adhesive layers are used. The instant Application has found that storage wrap materials having adhesive layers thinner than those specified in McGuire can be produced by applying a thin layer of adhesive (0.00001 inch to 0.0002 inch) to a film substrate having a thickness ranging from 0.0001 inch to 0.001 inch." Appellants Declarant continues, "Such thin adhesive layers (0.00001 inch to 0.0002 inch) as claimed in the instant Application are desirable because they provide significant cost savings and processing benefits due to the need for less adhesive." Appellants declarant concludes by stating that, "Disposing a thin adhesive layer ... upon a sheet material having a thickness ranging from about 0.0001 inch to 0.001 inch is not disclosed or suggested by the McGuire reference.""

However, it is to be pointed out that the declaration filed November 4, 2003 is merely drawn to Applicant's opinion of the prior art cited by the Examiner. There is no showing of unexpected results. To establish unexpected results over a claimed range, applicants should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. *In re Hill*, 284 F.2d 955, 128 USPQ 197 (CCPA 1960). Furthermore, the examples in the Declaration are of no probative value in determining




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patentability of claims since they do not involve a comparison of Applicant's invention with the closest applied prior art. See *In re De Blawe*, 222 USPQ 191 (Fed. Cir. 1984), and *In re Fenn*, 208 USPQ 470 (CCPA 1981). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the thickness of the adhesive coating in *McGuire et al.* to range from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in order to provide a thin adhesive coating for the purpose of having less costs and expenses when making the product.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Catherine Simone  
October 20, 2004

Conferees  
Harold Pyon  
Patrick Ryan



  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

1772

10/26/04

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